

APPENDIX

Pensions Act 1995

75.— Deficiencies in the assets.

(1) This section applies in relation to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) If—

(a) at any time which falls—

- (i) when a scheme is being wound up, but
- (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,

the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and

(b) the trustees or managers of the scheme designate that time for the purposes of this subsection (before the occurrence of an event within paragraph (a)(ii)),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme. This is subject to subsection (3).

(3) Subsection (2) applies only if—

(a) either—

(i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending with the commencement of the winding up of the scheme, or

(ii) during the period—

(a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in sub-paragraph (i), and

(b) ending with the commencement of the winding up of the scheme,

a cessation notice was issued in relation to the scheme and became binding, and

(b) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (a)(i).

(4) Where—

(a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,

(b) the current event—

- (i) occurred on or after the appointed day, and
- (ii) did not occur in prescribed circumstances,

(c) if the scheme was being wound up immediately before that event, subsection (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,

(d) if the current event is within subsection (6A)(a) or (b), either—

(i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending immediately before the current event, or

(ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—

(a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in sub-paragraph (i), and

(b) ending immediately before the current event, and

(e) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (d)(i),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(4A) Where the current event is within subsection (6A)(a) or (b), the debt under subsection (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.

(4B) Subsection (4C) applies if, in a case within subsection (4)—

(a) the current event is within subsection (6A)(a) or (b), and

(b) the scheme was not being wound up immediately before that event.

(4C) Where this subsection applies, the debt due from the employer under subsection (4) is contingent upon—

(a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—

(i) the scheme failure notice is binding,

(ii) no relevant event within subsection (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and

(iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—

(a) beginning with the occurrence of the current event, and

(b) ending immediately before the issuing of the scheme failure notice,

and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or

(b) the commencement of the winding up of the scheme before—

(i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or

(ii) any relevant event within subsection (6A)(c) occurs in relation to the employer.

(5) For the purposes of subsections (2) and (4), the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.

(6) In calculating the value of any liabilities for those purposes, a provision of the scheme rules which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded. In this subsection “*scheme rules*” has the same meaning as in the Pensions Act 2004 (“the 2004 Act”) (see section 318 of that Act).

(6A) For the purposes of this section, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—

(a) an insolvency event occurs in relation to the employer,

(b) the trustees or managers of the scheme make an application under subsection (1) of section 129 of the 2004 Act or receive a notice from the Board of the Pension Protection Fund under subsection (5)(a) of that section, or

(c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members’ voluntary winding up).

(6B) For the purposes of this section—

(a) a “*cessation notice*”, in the case of a relevant event within subsection (6A)(a), means—

(i) a withdrawal notice issued under section 122(2)(b) of the 2004 Act (scheme rescue has occurred),

(ii) a withdrawal notice issued under section 148 of that Act (no insolvency event has occurred or is likely to occur),

(iii) a notice issued under section 122(4) of that Act (inability to confirm status of scheme) in a case where the notice has become binding and section 148 of that Act does not apply,

(b) a “*cessation notice*” in the case of a relevant event within subsection (6A)(b), means a withdrawal notice issued under section 130(3) of the 2004 Act (scheme rescue has occurred),

(c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,

(d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—

(i) any cessation notice which has been issued in relation to the scheme during the specified period,

(ii) any failure to issue such a cessation notice during the specified period,

(iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part 2 of the 2004 Act which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice

which has been issued during that period becoming binding,

(iv) any failure to issue such a notice as is mentioned in subparagraph (iii),

(e) the issue or failure to issue a notice is to be regarded as reviewable—

(i) during the period within which it may be reviewed by virtue of Chapter 6 of Part 2 of the 2004 Act, and

(ii) if the matter is so reviewed, until—

(a) the review and any reconsideration,

(b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and

(c) any appeal against his determination or directions,

has been finally disposed of, and

(f) a “*scheme failure notice*” means a scheme failure notice issued under section 122(2)(a) or 130(2) of the 2004 Act (scheme rescue not possible).

(6C) For the purposes of this section—

(a) section 121 of the 2004 Act applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,

(b) “*appointed day*” means the day appointed under section 126(2) of the 2004 Act (no pension protection under Chapter 3 of Part 2 of that Act if the scheme begins winding up before the day appointed by the Secretary of State),

(c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,

(d) references to a cessation notice becoming binding are to the notice in question mentioned in subsection (6B)(a) or (b) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act, and

(e) references to a scheme failure notice becoming binding are to the notice in question mentioned in subsection (6B)(f) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act.

(6D) Where—

(a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members’ voluntary winding up), and

(b) the voluntary winding up of the employer—

(i) is stayed other than in prescribed circumstances, or

(ii) becomes a creditors’ voluntary winding up under section 96 of that Act (conversion to creditors’ voluntary winding up),

this section has effect as if that resolution had never been passed and any debt which arose under this section by virtue of the passing of that resolution shall be treated as if it had never arisen.

(7) This section does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme’s assets.

(8) A debt due by virtue only of this section shall not be regarded—

(a) as a preferential debt for the purposes of the Insolvency Act 1986, or

(b) as a preferred debt for the purposes of the Bankruptcy (Scotland) Act 2016.

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(10) Regulations may modify this section as it applies in prescribed circumstances.

75A Deficiencies in the assets: multi-employer schemes

(1) Regulations may modify section 75 (deficiencies in the assets) as it applies in relation to multi-employer schemes.

(2) The regulations may in particular provide for the circumstances in which a debt is to be treated as due under section 75 from an employer in relation to a multi-employer scheme (a “multi-employer debt”).

(3) Those circumstances may include circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of section 75).

(4) For the purposes of regulations under this section, regulations under section 75(5) may prescribe alternative manners for determining, calculating and verifying—

(a) the liabilities and assets of the scheme to be taken into account, and

(b) their amount or value.

(5) The regulations under this section may in particular—

(a) provide for the application of each of the prescribed alternative manners under section 75(5) to depend upon whether prescribed requirements are met;

(b) provide that, where in a particular case a prescribed alternative manner under section 75(5) is applied, the Authority may in prescribed circumstances issue a direction—

(i) that any resulting multi-employer debt is to be unenforceable for such a period as the Authority may specify, and

(ii) that the amount of the debt is to be re-calculated applying a different prescribed manner under section 75(5) if prescribed requirements are met within that period.

(6) The prescribed requirements mentioned in subsection (5) may include a requirement that a prescribed arrangement, the details of which are approved in a notice issued by the Authority, is in place.

(7) The regulations may provide that the Authority may not approve the details of such an arrangement unless prescribed conditions are met.

(8) Those prescribed conditions may include a requirement that—

(a) the arrangement identifies one or more persons to whom the Authority may issue a contribution notice under the regulations, and

(b) the Authority are satisfied of prescribed matters in respect of each of those persons.

(9) For the purposes of subsection (8) a “contribution notice” is a notice stating that the person to whom it is issued is under a liability to pay the sum specified in the notice—

(a) to the trustees of the multi-employer scheme in question, or

- (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), to the Board.
- (10) The regulations may provide for the Authority to have power to issue a contribution notice to a person identified in an arrangement as mentioned in subsection (8) if–
- (a) the arrangement ceases to be in place or the Authority consider that the arrangement is no longer appropriate, and
 - (b) the Authority are of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.
- (11) Where a contribution notice is issued to a person under the regulations as mentioned in subsection (8), the sum specified in the notice is to be treated as a debt due from that person to the person to whom it is to be paid as specified in the notice.
- (12) Where the regulations provide for the issuing of a contribution notice by the Authority as mentioned in subsection (8)–
- (a) the regulations must–
 - (i) provide for how the sum specified by the Authority in a contribution notice is to be determined,
 - (ii) provide for the circumstances (if any) in which a person to whom a contribution notice is issued is jointly and severally liable for the debt,
 - (iii) provide for the matters which the notice must contain, and
 - (iv) provide for who may exercise the powers to recover the debt due by virtue of the contribution notice, and
 - (b) the regulations may apply with or without modifications some or all of the provisions of sections 47 to 51 of the Pensions Act 2004 (contribution notices where non-compliance with financial support direction) in relation to contribution notices issued under the regulations.
- (13) In this section “*multi-employer scheme*” means a trust scheme which applies to earners in employments under different employers.
- (14) This section is without prejudice to the powers conferred by–
- section 75(5) (power to prescribe the manner of determining, calculating and verifying assets and liabilities etc),
 - section 75(10) (power to modify section 75 as it applies in prescribed circumstances),
 - section 118(1)(a) (power to modify any provisions of this Part in their application to multi-employer trust schemes), and
 - section 125(3) (power to extend for the purposes of this Part the meaning of “employer”).

Pensions Act 2004

120 Duty to notify insolvency events in respect of employers

- (1) This section applies where, in the case of an occupational pension scheme, an insolvency event occurs in relation to the employer.

(2) The insolvency practitioner in relation to the employer must give a notice to that effect within the notification period to—

- (a) the Board,
- (b) the Regulator, and
- (c) the trustees or managers of the scheme.

(3) For the purposes of subsection (2) the “*notification period*” is the prescribed period beginning with the later of—

- (a) the insolvency date, and
- (b) the date the insolvency practitioner becomes aware of the existence of the scheme.

(4) A notice under this section must be in such form and contain such information as may be prescribed.

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129 Applications and notifications for the purposes of section 128

(1) Where the trustees or managers of an eligible scheme become aware that—

- (a) the employer in relation to the scheme is unlikely to continue as a going concern, and
- (b) the prescribed requirements are met in relation to the employer,

they must make an application to the Board for it to assume responsibility for the scheme under section 128.

(2) Where the Board receives an application under subsection (1), it must give a copy of the application to—

- (a) the Regulator, and
- (b) the employer.

(3) An application under subsection (1) must—

- (a) be in the prescribed form and contain the prescribed information, and
- (b) be made within the prescribed period.

(4) Where the Regulator becomes aware that—

- (a) the employer in relation to an eligible scheme is unlikely to continue as a going concern, and
- (b) the requirements mentioned in subsection (1)(b) are met in relation to the employer,

it must give the Board a notice to that effect.

(5) Where the Board receives a notice under subsection (4), it must—

- (a) give the trustees or managers of the scheme a notice to that effect, and
- (b) give the employer a copy of that notice.

(6) The duty imposed by subsection (1) does not apply where the trustees or managers of an eligible scheme become aware as mentioned in that subsection by reason of a notice given to them under subsection (5).

(7) The duty imposed by subsection (4) does not apply where the Regulator becomes aware as mentioned in that subsection by reason of a copy of an application made by the trustees or managers of the eligible scheme in question given to the Regulator under subsection (2).

(8) Regulations may require notices under this section to be in the prescribed form and contain the prescribed information.

Occupational Pension Schemes (Employer Debt) Regulations (S.I. 2005 No. 678)

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6.— Multi-employer schemes: general

(1) In its application to a multi-employer scheme, section 75 of the 1995 Act has effect in relation to each employer as if—

(a) the reference in section 75(2)(a) to a time which falls before any relevant event in relation to the employer which occurs while the scheme is being wound up were a reference to a time which falls before relevant events have occurred in relation to all the employers;

(b) the reference in section 75(2) to an amount equal to the difference being treated as a debt due from the employer were a reference to an amount equal to that employer's share of the difference being treated as a debt due from that employer;

(c) the references in section 75(3)(a)(i) and (b) to no relevant event of the kind there mentioned occurring in relation to the employer were references to no event of that kind occurring in relation to all the employers;

(d) the reference in section 75(4)(a) to a relevant event ("the current event") occurring in relation to the employer were a reference to a relevant event or an employment-cessation event occurring only in relation to that employer;

(e) the reference in section 75(4) to an amount equal to the difference being treated as a debt due from the employer were—

(i) in a case where the difference is ascertained immediately before a relevant event occurs in relation to the employer, a reference to an amount equal to the sum of any unpaid expenses which were incurred by the scheme in connection with a previous employment-cessation event occurring to the employer and the employer's share of the difference being treated as a debt due from the employer; and

(ii) in a case where the difference is ascertained immediately before an employment cessation event occurs in relation to the employer, a reference to an amount equal to the sum of the cessation expenses attributable to the employer and the employer's share of the difference being treated as a debt due from the employer; and

(f) section 75(4)(d) and (e) were omitted.

(2) For the purposes of paragraph (1), an employer's share of the difference is the liability share unless the conditions are met for it being one of the following—

(a) the scheme apportionment arrangement share;

(b) the regulated apportionment arrangement share;

(c) the withdrawal arrangement share; or

(d) the approved withdrawal arrangement share.

(3) Where—

(a) the withdrawal arrangement share applies, the modification in regulation 6C(2) of section 75(4) of the 1995 Act shall apply when the withdrawal arrangement comes into force;

(b) the approved withdrawal arrangement share applies, the modification in regulation 7(6) of section 75(4) of the 1995 Act shall apply when the approved withdrawal arrangement comes into force.

(4) For the purposes of calculating the liability proportion for the purposes of the liability share, the liabilities attributable to employment with any employer (“Employer A”) shall be determined by the trustees or managers, after consulting the actuary and Employer A, as follows—

(a) where a scheme apportionment arrangement (or before 6th April 2008, an exercise of a scheme apportionment rule) or a regulated apportionment arrangement has required certain liabilities to be apportioned to one or more employer in a particular way, those liabilities shall be so attributed;

(aa) where there is a restructuring within regulation 6ZB or 6ZC and regulation 6ZA(3) or (4) does not apply in relation to that restructuring, all of the liabilities in relation to the scheme which were attributable to the exiting employer shall be attributed to the receiving employer;

(ab) where a flexible apportionment arrangement has taken effect, the liabilities to be attributed to Employer A must include the liabilities for which Employer A—

(i) has taken over responsibility under that arrangement; or

(ii) is treated for all purposes as being responsible under that arrangement;

(b) subject to sub-paragraph (c), the liabilities to or in respect of any member which arose during or as a result of pensionable service with Employer A (including any liabilities attributable to a transfer in respect of that member received by the scheme during that period or periods of pensionable service) are attributable to Employer A; and

(c) where any of the circumstances in paragraph (5) applies in respect of certain liabilities in respect of any member, those liabilities shall be attributable in accordance with the following sub-paragraphs applied in sequence—

(i) either—

(aa) if Employer A is the last employer of any member and the liabilities in respect of that member cannot be attributed to any employer, all of the liabilities to or in respect of any such member shall be attributable to Employer A, or

(bb) the liabilities in respect of any member which cannot be attributed to any employer shall be attributable in a reasonable manner to one or more employer (which may or may not include Employer A), or

(ii) if the trustees or managers are unable to determine whether or not Employer A is the last employer of any member and the liabilities in respect of that member cannot be attributed to any employer, the liabilities attributable to any such member shall not be attributable to any employer.

(5) The circumstances referred to in paragraph 4(c) are—

(a) where the trustees or managers are unable to determine to whom liabilities in respect of any member should be attributed in accordance with paragraph (4) (b), paragraph (4)(c) shall apply in relation to those liabilities which cannot be attributed to any employer under paragraph (4)(b); or

(b) where the trustees or managers are able to determine to whom liabilities in respect of any member should be attributed in accordance with paragraph (4)(b), but to do so they expect disproportionate costs will be incurred by the scheme, paragraph (4)(c) shall apply in relation to those liabilities which cannot be attributed to any employer under paragraph (4)(b) except at disproportionate costs.

(6) Where an employer notifies the trustees that a relevant transfer deduction shall apply to a departing employer's liabilities—

(a) the departing employer's liability share shall be reduced by the amount of the relevant transfer deduction, provided the relevant transfer liabilities and corresponding assets are transferred out during the period commencing with the applicable time and ending on the day that is 12 months later ("transfer out period"); and

(b) the liability share shall be calculated after the end of the transfer out period or if all transfers are completed on a date before the end of that period, after that date.

(7) For the purposes of paragraph (6), the relevant transfer deduction shall be determined by calculating the relevant transfer liabilities and the corresponding assets in accordance with regulation 5.

(8) The amount of the liabilities attributable to an employer under paragraph (4), the liability proportion, and the amount of the liability share shall be calculated and verified by the actuary in accordance with any relevant FRC standards and shall be certified by him in the form set out in Schedule 1 to these Regulations.

7.— Approved withdrawal arrangements

(1) If a cessation employer notifies the Authority in writing that he proposes to enter into an arrangement under this regulation and proposes to seek the Authority's approval of the arrangement, the Authority may issue directions that—

(a) a debt which may be treated as due under section 75(4) of the 1995 Act is to be unenforceable for such period ("suspension period") as the Authority may specify in the direction;

(b) the suspension period is to be extended by such further periods as it specifies; and

(c) if an approved withdrawal arrangement comes into force before the end of the suspension period, section 75(4) of the 1995 Act is to apply with the modifications in paragraph (6).

(2) The Authority may not approve an arrangement under this regulation unless—

(a) the amount the cessation employer proposes to pay as its approved withdrawal arrangement share is less than amount A,

(b) the trustees have notified the Authority that the funding test is met, and

(c) the Authority is satisfied that it is reasonable to do so having regard to such matters as the Authority considers relevant, which may include the following—

(i) the potential effect of the employment-cessation event on the method or assumptions used to calculate the scheme's technical provisions;

(ii) the financial circumstances of the proposed guarantors;

(iii) the amount of the cessation employer's share of the difference under the liability share;

(iv) the amount the cessation employer proposes to pay as its approved withdrawal arrangement share (and, where there is likely to be a relevant transfer deduction, an estimate of the amount that the

cessation employer will pay if the transfer is completed); and

(v) the effect of the proposed arrangement on the security of members' benefits under the scheme.

(3) Approval by the Authority of an arrangement—

(a) may be given subject to such conditions as the Authority considers appropriate; and

(b) is to be given in a notice issued by the Authority.

(4) An arrangement may be approved by the Authority in advance of an employment-cessation event occurring (see paragraph 6 of Schedule 1A) or following the occurrence of such an event.

(5) An arrangement may be approved by the Authority where a departing employer notifies the trustees that a relevant transfer deduction shall apply to the proposed approved withdrawal arrangement share, but such approval will cease to be effective if the transfer or transfers of the cessation employer's liabilities are not completed on or before the date which is twelve months after the employment-cessation event or within such a longer period as the Authority approves.

(6) If the Authority issues the directions referred to in paragraph (1) and an approved withdrawal arrangement comes into force before the end of the suspension period (referred to in that paragraph)—

(a) the cessation employer's share of the difference shall for the purposes of regulation 6(2) be the approved withdrawal arrangement share, and

(b) section 75(4) of the 1995 Act shall apply as if amount B is treated as a debt due from the guarantors at the guarantee time for which (if there is more than one guarantor) they are jointly, or if the approved withdrawal arrangement provides, jointly and severally liable.

(7) The Authority may issue a direction that amount B under an approved withdrawal arrangement is not to be treated as a debt due from the guarantors under section 75(4) of the 1995 Act and any such direction must be issued—

(a) before the guarantee time, and

(b) if the Authority considers that the approved withdrawal arrangement is no longer required.

(8) The Authority may issue a notice that it considers amount B (or the balance remaining) under an approved withdrawal arrangement should be paid but it may not issue such a notice unless it considers that it is reasonable for the guarantors to be required to pay that amount at that time.

(9) In forming an opinion for the purposes of paragraph (8), the Authority must have regard to such matters as the Authority considers relevant including—

(a) whether the guarantors have taken reasonable steps to comply with the approved withdrawal arrangement;

(b) whether the guarantors have complied with their obligations under Schedule 1B (notifiable events); and

(c) the guarantors' financial circumstances.

(10) Where the Authority considers that an arrangement no longer requires to be continued in force, it may issue a notice to the parties to that effect.

(11) Schedule 1A makes further provision in relation to approved withdrawal arrangements.

8.— Single employer sections, multi-employer sections, etc

(1) Where section 75 of the 1995 Act and these Regulations (apart from this regulation) apply to a scheme in relation to which there is more than one employer they shall apply to each of the following sections or parts of that scheme as if the section or part were a separate scheme—

- (a) a section of a segregated scheme with one employer in relation to the section;
- (b) a section of a segregated scheme with more than one employer in relation to the section;
- (c) a death benefits section of a segregated scheme;
- (d) a frozen section of a segregated scheme.

(2) For the purposes of paragraph (1)—

(a) subject to sub-paragraph (b), a “*segregated scheme*” means a scheme in relation to which there is more than one employer and which is divided into two or more sections where—

(i) any contributions payable to the scheme by an employer in relation to the scheme, or by a member in employment under that employer, are allocated to that employer’s section, or if more than one section applies to that employer, to the section which is appropriate in respect of the employment in question; and

(ii) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;

(b) when determining whether a scheme is a segregated scheme there shall (for that purpose) be disregarded any provisions of the scheme which—

(i) permit contributions or transfers of assets to be used to provide death benefits;

(ii) permit any assets of a section of a scheme to be used for the purpose of another section in the event of the winding-up of the scheme or a section;

(c) a “*death benefits section of a segregated scheme*” shall mean a section—

(i) which provides death benefits only; and

(ii) to which contributions or transfers of assets may only be made for the purpose of providing death benefits;

(d) a “*frozen section of a segregated scheme*” shall mean a section—

(i) which applies only to members who are no longer in pensionable service in relation to the section (and a period of grace notice has not been given under regulation 6A and a period of grace under that regulation is not in progress); and

(ii) where the scheme rules have not been amended to prevent the scheme from otherwise being a segregated scheme.

The Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (S.I.
2005 No. 441)

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45.— Application and effect

(1) This regulation applies to a non-segregated scheme in circumstances where—

(a) an insolvency event occurs in relation to an employer in relation to the scheme; or

(b) the trustees or managers of the scheme become aware that an employer in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed under subsection (1)(b) of section 129 of the Act (applications and notifications for the purposes of section 128).

(2) Where—

(a) in relation to an employer in relation to a non-segregated scheme, an event described in paragraph (1)(a) or (b) occurs; and

(b) the requirement in the scheme rules for the trustees or managers of the scheme to segregate such part of the assets of the scheme as is attributable to the scheme's liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer in relation to the scheme ("the segregation requirement") would be triggered when an employer in relation to the scheme ceases to participate in the scheme,

the segregation requirement shall, in relation to the employer referred to in sub-paragraph (a) of this paragraph, be deemed to have been triggered immediately after the occurrence of the event described in paragraph (1)(a) or (b) and a segregated part of the scheme shall be deemed to have been created for and in respect of any period after the occurrence of that event where a withdrawal event within the meaning of section 149(2) of the Act has not occurred in relation to the segregated part.

(3) In this Part—

"non-segregated scheme" means a multi-employer scheme which is not divided into two or more sections under the rules of which the trustees or managers are required, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme's liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer; and

"segregated part" means a section of a non-segregated scheme which is created when a segregation requirement in the scheme rules has been triggered.

(4) Except as otherwise provided in this Part of these Regulations, in a case where this regulation applies—

(a) Part 2 of the Act, except Chapter 4, shall be read as if it contained the modifications provided for by this Part; and

(b) references in Part 2 of the Act, except in Chapter 4, to—

(i) "scheme rules" shall be read as if they were references to "rules of the scheme which apply to the segregated part";

(ii) "the scheme" shall be read as if they were references to "the segregated part";

(iii) "the employer" shall be read as if they were references to "the employer in relation to the

segregated part”; and

(iv) “trustees or managers of the scheme” shall, in relation to a segregated part of a non-segregated scheme, be read as if they were references to “trustees or managers with ultimate responsibility for the administration of the segregated part”; and

(c) Part 2 of the Act shall be read as if section 143A were omitted.

(5) Paragraph (4) shall not have effect in relation to section 174 of the Act (initial levy).

46.— Notification of insolvency events, confirmation of scheme status etc.

(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

(a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where an insolvency event occurs in relation to an employer in relation to a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”) under the rules of which the trustees or managers of the scheme are required, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to that employer (“the segregated part”).”

; and

(b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice from an insolvency practitioner under subsection (2), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(2) Section 122 of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

(a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where an insolvency event has occurred in relation to an employer in relation to a non-segregated scheme and a segregated part of the scheme is created.”;

(b) in subsection (2)–

(i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to a segregated part”; and

(ii) after the words “a scheme rescue has occurred” in paragraph (b), there were inserted the words “in relation to a segregated part”;

(c) in subsection (4)–

(i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to the relevant segregated part”; and

(ii) after the words “a scheme rescue has occurred” there were inserted the words “in relation to the relevant segregated part”;

(d) in subsection (5)–

(i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a segregated part of a non-segregated scheme”; and

(ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a segregated part”; and

(e) after subsection (6), there were inserted the following subsection–

“(6A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice issued by an insolvency practitioner or former insolvency practitioner under subsection (6), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(3) Section 123 of the Act (approval of notices issued under section 122) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

(a) for subsection (1), there were substituted the following subsection–

“(1) This section applies where the Board receives a notice under section 122(6) (“the section 122 notice”) in relation to a segregated part of a non-segregated scheme.”

; and

(b) after subsection (4), there were inserted the following subsection–

“(4A) Where the trustees or managers of a segregated part of a non-segregated

scheme receive a copy of a determination notice from the Board under subsection (4), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(4) Section 124 of the Act (Board’s duty where there is a failure to comply with section 122) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

(a) for the words “This section applies where, in relation to an occupational pension scheme” in subsection (1), there were substituted the words “This section applies where, in relation to a segregated part of a non-segregated scheme”; and

(b) after subsection (4), there were inserted the following subsection–

“(4A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a notice issued by the Board under [(section 122)]² by virtue of this section, they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(5) Section 125 of the Act (binding notices confirming status of the scheme) shall be modified in its application to a segregated part to which regulation 45 applies so that [it shall be read as if]³ after subsection (3), there were inserted the following subsection–

“(3A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice from the Board under subsection (3) together with a copy of the binding notice, they must send a copy of the notice and the binding notice as soon as practicable to all the employers in relation to the scheme.”.

.....

71.— Application and effect

(1) This regulation applies to a non-segregated multi-employer scheme in circumstances–

(a) where–

(i) an insolvency event occurs in relation to an employer in relation to the scheme; or

(ii) the trustees or managers of the scheme become aware that an employer in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed under subsection (1)(b) of section 129 of the Act (applications and notifications for the purposes of section 128); and

(b) where, under the rules of the scheme, the trustees or managers have an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer.

(2) In the case of a scheme to which this regulation applies–

(a) the trustees or managers of the scheme shall be deemed to have exercised the option to segregate under the scheme rules so as to create a segregated part of the scheme unless and until they decide not to exercise that option and have given the Board a notice to this effect as required by section 120(3A) or 129(1B) of the Act as modified by this Part; and

(b) except as otherwise provided for in paragraph (3) below, Part 2 of the Act shall be read in relation to the scheme as if it contained the modifications provided for in Part 5 of these Regulations.

(3) The exceptions referred to in paragraph (2) above are that–

(a) section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified so that it shall be read as if–

(i) for subsection (1), there were substituted the following subsection–

“(1) This section applies where an insolvency event occurs in relation to an employer in relation to a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”) under the rules of which the trustees or managers of the scheme have an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to that employer (“the segregated part”).”

; and

(ii) after subsection (3), there were inserted the following subsection–

“(3A) If, where this section applies to a non-segregated scheme, the trustees or managers of the scheme decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of the scheme they must, as soon as practicable–

(a) give a notice to the Board to that effect (a “non-segregation notice”);
and

(b) send a copy of that notice to–

(i) an insolvency practitioner acting in relation to the employer, and

(ii) the Regulator.”;

(b) section 122 of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme) shall be modified so that it shall be read as if, after subsection (2), there were inserted the following subsection–

“(2A) Where an insolvency practitioner acting in relation to an employer in relation to a non-segregated scheme receives a non-segregation notice under subsection (3A) of section 120 from the trustees or managers of the scheme, he must as soon as practicable issue a notice under subsection (2)(b) (a “withdrawal notice”) in relation to the scheme.”

; and

(c) section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified so that it shall be read as if–

(i) for subsection (1), there were substituted the following subsection–

“(1) The trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme must make an application to the Board for it to assume responsibility for a segregated part of the scheme under section 128 where they become aware that–

(a) an employer in relation to the scheme is unlikely to continue as a going concern, and

(b) the prescribed requirements are met in relation to that employer, and where the rules of the scheme contain an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, for the trustees or managers to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer.”

; and

(ii) after subsection (1A), there were inserted the following subsections–

“(1B) If, where subsection (1) applies to a non-segregated scheme, the trustees or managers of the scheme decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of the scheme they must, as soon as practicable–

(a) give a notice to the Board to that effect (a “non-segregation notice”); and

(b) send a copy of that notice to the Regulator.”; and

(1C) Where the Board receives a non-segregation notice from the trustees or managers of a non-segregated scheme under paragraph (a) of subsection (1B), it must as soon as practicable issue a notice under subsection (3) of section 130 (a “withdrawal notice”) in relation to the scheme.”